IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1259 OF 2004

Subhan Mumtaj Ansari
convict No. C-13987
Yerwada Central Prison,
Pune ..Applicant
V/s
The State of Maharashtra ..Respondent.

Mr.D.G. Khamkar, Advocate for the applicant.
Ms.S.V. Gajare, APP for the State.

CORAM : J.H. BHATIA, J.

DATE : 28TH MARCH, 2007.

ORAL JUDGMENT

. The appellant, who was original accused No.2 was convicted for the offence punishable under section 392 r/w section 397 Indian Penal Code and was sentenced to undergo R.I. for seven years and to pay fine of Rs. 200/- and in default to pay fine, to undergo further R.I. for 15 days. He has preferred this appeal challenging the conviction and sentence.

2. Prosecution case, in brief, is that first informant, P.W.1 Asha Sheshadri Ayyar had left her house on 19/10/2001 at about 3 P.M.. to meet her relatives at different places. At about 9.05 P.M. she came from

Nalasopara to Vasai local Railway Station and from there she went to Vasai-East rickshaw stand and boarded Rickshaw No. MH04/AR/8807 to go to her house situated in Veena Cooperative Housing Society at Vasant Nagari, Vasai Road, Vasai. One more passenger also sat by the side and thereafter within a few seconds two young boys came there and boarded the rickshaw. One of them occupied a seat by the side of the rickshaw driver and another sat on the back seat made for passengers. After that the rickshaw proceeded towards Vasant Nagari. When the rickshaw was about 40 or 50 feet away from the by-pass road to Vasant Nagari, the passenger sitting by the side of driver, who is identified as the present accused, asked the driver to stop the rickshaw, as his Chappal had fallen down. Accordingly, the rickshaw was stopped and the accused got down to fetch his chappal. The rickshaw driver asked him to come soon after taking his chappal. When the accused had left the rickshaw to bring his chappal, his companion, who was sitting on the passenger seat also got down. The present accused came near rickshaw driver and pointed a country made pistol or Katta towards the said rickshaw driver and began to abuse him. At that time, his companion, came near P.W.1 Asha snatched the gold chain from her neck and ran away.

However the rickshaw driver resisted and caught hold of the accused, who was holding pistol. The scuffle took place between them. Some other rickshaw drivers also came there and began to beat accused. The accused, who was holding the country made pistol, was, however, overpowered and caught and taken to the police station. Two police constables had also come on the spot and they took accused to the police station. At the police station the report was lodged by Asha Sheshadri (P.W.2). The pistol was seized under a panchanama. After investigation the charge-sheet was filed. The companion of the present accused, who had snatched the gold chain could not be found and charge-sheet was filed only against the present appellant.

3. The charge was framed against the accused for the offence punishable under section 394 r/w section 34, Section 392, 395 r/w section 397 as well as under the Indian Arms Act. However, after the trial the accused/appellant was convicted only for the offence punishable under section 392 r/w section 397 and sentenced as stated above.

4. Heard Mr. Khamkar, learned Counsel for the

acucsed/appellant and Ms. Gajare, APP for the State. Perused the record and proceeding.

5. P.W.2 Asha Sheshadri and P.W.4 Santosh Gupta, who was the rickshaw driver are the important eye witnesses in this case. P.W. 2 Asha deposed in detail, as to how she had left her house to meet relatives because of Dashera festival. According to her, she came from Borivali to Vasai by local train and thereafter, she went to rickshaw stand at Vasai East. She occupied seat to the extreme right side in the above referred rickshaw. One passenger from her locality was sitting by her side. Two other young persons, who had come together, also occupied seats; One on the extreme left side of the passenger seat and one shared the seat with rickshaw driver. The passenger, who was sitting by the side of rickshaw driver, asked the rickshaw driver to stop the rickshaw as his chappal had fallen down. Therefore, the rickshaw was stopped. That passenger got down and went to pick up his chappal. He took some time in coming back. According to her, his companion, who was sitting on the back seat also got down and he was also indicating some thing to the first one. Rickshaw driver requested former passenger, who had gone to bring

his chappal to come soon. However, that person came from the rear side of the rickshaw driver and pointed the pistol to the forehead of the rickshaw driver. At the same time, his companion came near Asha Sheshadri and snatched gold chain worth Rs. 22,000/- and a wrist watch worth Rs. 500/-. He ran away after snatching gold chain and wrist watch. Meanwhile, the rickshaw driver had a scuffle with the passenger holding pistol. Some other rickshaw drivers also came there. The people caught that person along with his pistol. At the same time, traffic police constables also came there and they took the culprit to police station. The accused/appellant was identified by her as the same person, who was holding pistol. P.W.4 Santosh Gupta, rickshaw driver fully corroborated the testimony of Asha. P.W.3 Jayram Kambli and P.W.7 Pradeep Pawar are the police constables. According to them they saw that some vehicles had stopped on the road leading to Vasant Nagari. They also heard shouts and therefore, they went to the spot and found that one person was being beaten by 3-4 persons. They reached to that person and came to know about the above referred incident. They identified the present accused as the same person, who was being beaten by some rickshaw drivers. According to their

evidence they took the accused along with pistol to the police station and pistol was seized under the panchanama. P.W.1 Ganesh Shetty was a panch witness of the panchanama at Exh.7 about the seizure of pistol. This seizure is also proved by P.W.8 Kailas Barve, who is Investigating Officer.

6. I find that the evidence of prosecution witnesses goes to prove that the present appellant and his companion, who could not be arrested had come together and there is reason to believe that they had common intention to commit robbery. The present applicant was having a country pistol which was referred to the ballistic expert and as per the report of the ballistic expert Exh.38, it was a single barrel breach load Country made hand-gun with five intact KF 8 MM rifle cartridges. It was found in working condition and capable of chambering and firing 8 MM rifle cartridges. Thus it is proved that the present appellant was armed with a fire arm which was a country made hand-gun or pistol. It appears that the present applicant and his companions had some plan and as per the said plan the present applicant got the rickshaw stopped and went towards backside under the pretext of bringing his

chappal. After bringing his chappal, he went to the rickshaw driver and pointed pistol towards the forehead of P.W.4 Santosh Gupta, the rickshaw driver. and in the meanwhile his companion snatched the gold chain and wrist watch of Asha Sheshadri and ran away, while present applicant was being beaten by rickshaw driver and others. Therefore, there is reason to believe that both the accused were acting in furtherance of common intention to commit robbery. Thus, the offence under section 392 IPC is proved and as it is proved that the present applicant was armed with a weapon i.e. Country pistol and he used it for the purpose of causing alarm in the mind of rickshaw driver and the passengers for the purpose of committing robbery. Therefore, he is liable to be convicted for the offence punishable under section 392 r/w section 397 IPC. I do not find any fault with the finding of the trial Court. Section 392 provides that whoever commits robbery shall be punished with R.I. for a term which may extend to 10 years and shall also be liable to fine. However, Section 397 further provides that if, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the

imprisonment, with which such offender shall be punished, shall not be less than seven years. The learned trial Court awarded the minimum prescribed sentence under section 392 r/w section 397 IPC and therefore, in my opinion, it needs no interference.

7. For the reasons stated above, the appeal stands dismissed.

(J.H. BHATIA, J.)